A **DR DAVID VANNIASINGHAM RAMANATHAN**

v.

SUBANG JAYA MEDICAL CENTRE SDN BHD

B COURT OF APPEAL, PUTRAJAYA
ABDUL AZIZ MOHAMAD JCA
MOHD GHAZALI YUSOFF JCA
ZALEHA ZAHARI JCA
[CIVIL APPEAL NO: W-02-792-2005]
C 8 DECEMBER 2006

LABOUR LAW: *Employment - Reinstatement - Non-renewal by respondents of appellant's agreement to practise medicine at respondents' hospital - Appellant filed for reinstatement and also sought interlocutory*
D *injunction that would enable him to remain in his job until determination of his representations - Whether High Court capable of granting such injunction*

CIVIL PROCEDURE: *Injunction - Interlocutory injunction - Non-*
E *renewal by respondents of appellant's agreement to practise medicine at respondents' hospital - Appellant filed for reinstatement and also sought interlocutory injunction that would enable him to remain in his job until determination of his representations - Whether High Court capable of granting such injunction*

F ***CIVIL PROCEDURE:*** *Jurisdiction - High Court - Non-renewal by respondents of appellant's agreement to practise medicine at respondents' hospital - Appellant filed for reinstatement and also sought interlocutory injunction that would enable him to remain in his job until determination of his representations - Whether High Court capable of granting such*
G *injunction*

The appellant, a general surgeon, had been practising as a medical practitioner at the respondents' hospital since 1985 under successive agreements called "Agreement Active Status" ('AAS'),
H the last of which was dated 1 October 1995. He was not drawing a salary for working at the hospital but instead received professional fees from the patients he treated, less agreed deductions in favour of the respondents for expenses incurred by them. The appellant never entered into a contract of employment
I with the respondents. The AAS was not a contract of employment

but an agreement setting out terms and conditions of the appointment of the appellant by the respondents "to practise as a medical professional in the hospital". On June 2005, the respondents issued to the appellant a "Notice of Non-Renewal", giving the appellant 60 days' notice of their intention not to renew the agreement. Considering himself a "workman" as defined in the Industrial Relations Act 1967 ('Act') and the respondents his employer and the notice as tantamount to a dismissal of himself by his employer without just cause or excuse, the appellant filed for reinstatement to his former, or what would soon be his former, office. The appellant subsequently filed the originating summons in this case at the High Court together with an *ex parte* summons-in-chambers under the originating summons, seeking various injunctions whose effect would be that the appellant would continue to function at the respondents' hospital as before, until the originating summons were disposed of, or until it was finally determined after judicial review and appeals that the decision not to refer was correct or until the Industrial Court decided on them. The learned High Court judge dismissed the appellant's summons-in-chambers and the originating summons, agreeing with the respondents' contention that such an injunction as the plaintiff sought "cannot be given during the pendency of a representation for reinstatement under the Act". This appeal by the appellant followed.

Held (dismissing the appeal)
Per Abdul Aziz Mohamad JCA:

(1) It makes good sense that in a case of representations for reinstatement under s. 20(1) of the Act, the High Court should not grant, or should be incapable of granting, an interlocutory injunction so that the workman remains in his job until the determination of his representations. The Minister, in deciding under s. 20(3) of the Act whether or not "he thinks fit" to refer a workman's representations to the Industrial Court, will have to act according as to whether he finds that there are issues that need to be tried in the Industrial Court. In this case, for instance, the issues were whether the appellant was a "workman" and, if he was, whether the respondents' refusal to renew the agreement was valid. The decision of the Minister was subject to judicial review by the

A High Court subsequently. For the High Court to now consider granting an interlocutory injunction, it would have to decide, first and foremost, whether there were serious issues to be tried in the Industrial Court as regards those matters. But that was a question that had to be decided also by the B Minister as a statutory duty. If the High Court were to decide the question in dealing with the application for the interlocutory injunction, it would embarrass the Minister in his decision whether or not to refer the representations to the Industrial Court. The High Court would already have C answered a question which may have to be answered on a judicial review of the decision of the Minister to refer or not to refer the representations to the Industrial Court. Therefore, the High Court ought not to have to find, except on a judicial review, whether there were serious questions to be tried in the D Industrial Court, and since such finding is an essential step in the granting of an interlocutory injunction, the bar to making such a finding should be a bar to granting an interlocutory injunction. (para 14)

E **(2)** The learned judge was right in relying on the Supreme Court case of *Penang Han Chiang Associated Chinese School Association v. National Union of Teachers in Independent Schools, West Malaysia* as an authority that barred the granting of the interlocutory injunction that the appellant sought. That F authority was binding on this court, but apart from that, as had been explained, it was right that an interlocutory injunction should be incapable of being granted to enable a workman to remain in his job until his representations come to the end of the process. It was, therefore, not necessary to G consider the string of cases from other jurisdictions cited by the appellant to persuade this court that interlocutory injunctions have been granted as an exception to the rule that contracts of service were not specifically enforceable, beyond saying that those were not cases that involved the impediment H of another jurisdiction, the industrial-relations jurisdiction, as the present case did. (para 15)

I

Bahasa Malaysia *translation of headnotes*

Perayu, seorang pakar bedah am, telah beramal sebagai pengamal perubatan di hospital responden sejak 1985 di bawah beberapa perjanjian yang dipanggil "Agreement Active Status" ('AAS'), di mana perjanjian terakhirnya bertarikh 1 Oktober 1995. Perayu tidak menerima gaji kerana bekerja di hospital tersebut, sebaliknya menerima yuran profesional dari pesakit-pesakit yang dirawatinya, setelah ditolak perbelanjaan-perbelanjaan tertentu yang dipersetujui yang ditanggung oleh hospital. Perayu juga tidak pernah memeterai apa-apa kontrak pekerjaan dengan responden. AAS bukan satu kontrak pekerjaan tetapi adalah satu perjanjian yang membentangkan syarat dan terma perlantikan perayu oleh responden "untuk beramal sebagai profesional perubatan di hospital". Pada bulan Jun 2005, responden memberi "Notis Tidak Memperbaharui" kepada perayu, sekaligus memberi notis 60 hari akan niat mereka untuk tidak membaharui perjanjian. Perayu menganggap bahawa dirinya adalah "workman" seperti yang ditakrif oleh Akta Perhubungan Perusahaan 1967 ('Akta'), bahawa responden adalah majikannya dan bahawa notis adalah notis pembuangan kerjanya oleh responden tanpa sebab dan alasan yang adil, dan dengan itu telah memfail tuntutan untuk pengambilan semula ke jawatan lamanya. Perayu kemudian memfail saman pemula ini di Mahkamah Tinggi bersekali dengan saman dalam kamar *ex parte* di bawah saman pemula, memohon injunksi-injunksi tertentu yang kesannya adalah untuk membenarkan perayu terus bekerja di hospital responden seperti dahulu, sehinggalah saman pemula diputuskan, atau sehingga ianya diputuskan oleh semakan kehakiman atau rayuan, atau sehingga halperkara diputuskan oleh Mahkamah Perusahaan. Yang arif hakim Mahkamah Tinggi menolak saman dalam kamar dan saman pemula perayu, sekaligus bersetuju dengan hujah responden bahawa injunksi yang dipohon "tidak boleh diberi sewaktu representatsi untuk pengambilan semula di bawah Akta masih berjalan". Berikutnya, perayu merayu.

Diputuskan (menolak rayuan)
Oleh Abdul Aziz Mohamad HMR:

(1) Adalah boleh diterima bahawa dalam suatu kes representasi untuk pengambilan semula di bawah s. 20(1) Akta, Mahkamah Tinggi tidak harus membenarkan, atau harus tidak berkuasa membenarkan, injunksi interlokutori bagi membolehkan seseorang pekerja terus kekal dengan pekerjaannya sehingga

respresentasinya diputuskan. Menteri, apabila memutuskan di bawah s. 20(3) Akta sama ada atau tidak "ia mendapati sesuai" untuk merujuk seseorang pekerja ke Mahkamah Perusahaan, hendaklah bertindak mengikut sama ada beliau mendapati wujud isu-isu yang perlu dibicarakan di Mahkamah Perusahaan. Dalam kes ini, umpamanya, isu-isu adalah sama ada perayu merupakan seorang "pekerja", dan jika begitu, sama ada kegagalan responden untuk memperbaharui perjanjian tersebut sah. Keputusan Menteri pula adalah tertakluk kepada semakan kehakiman oleh Mahkamah Tinggi kemudiannya. Bagi Mahkamah Tinggi sekarang untuk mempertimbang membenarkan injunksi interlokutori, ia harus memutuskan, pertama sekali, sama ada terdapat isu-isu serius yang perlu dibicarakan di Mahkamah Perusahaan berkaitan halperkara yang berbangkit. Tetapi persoalan itu perlu juga dijawab oleh Menteri sebagai tugas statutorinya. Sekiranya Mahkamah Tinggi ingin menjawab soalan tersebut sewaktu menangani permohonan untuk injunksi interlokutori, maka ia tentulah menjejaskan Menteri dalam keputusannya sama ada atau tidak hendak merujuk representasi ke Mahkamah Perusahaan. Mahkamah Tinggi pasti akan menjawab persoalan yang perlu dijawab itu pada semakan kehakiman berhubung keputusan Menteri hendak merujuk atau tidak representasi ke Mahkamah Perusahaan. Oleh itu, Mahkamah Tinggi tidak seharusnya membuat dapatan, kecuali dalam satu semakan kehakiman, sama ada terdapat isu-isu serius yang perlu dibicarakan di Mahkamah Perusahaan, dan, oleh kerana dapatan sedemikian merupakan satu langkah penting dalam pemberian injunksi interlokutori, halangan kepada membuat dapatan itu akan juga menjadi halangan kepada pemberian injunksi interlokutori.

(2) Yang arif hakim betul bilamana bergantung kepada kes Mahkamah Agong *Penang Han Chiang Associated Chinese School Association v. National Union of Teachers in Independent Schools, West Malaysia* sebagai autoriti bagi menghalang pemberian injunksi interlokutori yang dipohon perayu. Autoriti tersebut mengikat mahkamah ini, tetapi, selain dari itu, sebagaimana yang dijelaskan, adalah betul bahawa suatu injunksi interlokutori seharusnya tidak diberi bagi membolehkan seorang pekerja kekal pada kerjanya sehingga resresentasinya sampai ke penghujung proses. Oleh itu, adalah tidak perlu untuk

menimbang kes-kes dari bidangkuasa-bidangkuasa lain yang dicatatkan oleh perayu untuk meyakinkan mahkamah ini bahawa injunksi interlokutori telah dibenarkan sebagai pengecualain kepada peraturan bahawa kontrak perkhidmatan secara khusus tidak boleh dilaksanakan, selain dari mengatakan bahawa kes-kes tersebut bukanlah kes-kes yang melibatkan penghalangan suatu bidangkuasa lain, yakni bidangkuasa perhubungan perhubungan, seperti yang berlaku di sini.

Case(s) referred to:

Ashton v. Shoreline Hotel [1994] 1 ERNZ 421 ***(refd)***

Fung Keong Rubber Manufacturing (M) Sdn Bhd v. Lee Eng Kiat & Ors [1981] 1 MLJ 238 ***(refd)***

Hill v. CA Parsons & Co Ltd [1972] 1 Ch 305 ***(refd)***

Kuantan Beach Hotel Sdn Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia [2004] 6 CLJ 18 HC ***(refd)***

Penang Han Chiang Associated Chinese School Association v. National Union of Teachers in Independent Schools, West Malaysia [1988] 1 MLJ 302 ***(foll)***

R Rama Chandran v. The Industrial Court of Malaysia [1997] 1 CLJ 147 FC ***(refd)***

RCA Sdn Bhd v. Pekerja-Pekerja RCA Sdn Bhd [1991] 1 CLJ 19; [1991] 1 CLJ (Rep) 401 SC ***(refd)***

Legislation referred to:

Industrial Relations Act 1967, ss. 4, 5, 7, 8, 20(1), (3)

For the appellant - Su Tiang Joo (Teh Eng Lay with him); M/s Cheah Teh & Su

For the respondents - M Pathmanathan (Rutheran Sivagnanam with him); M/s R Sivagnanam & Assoc

[Appeal from High Court, Kuala Lumpur; Originating Summons No: R1-24-56-2005]

Reported by Suresh Nathan

JUDGMENT

Abdul Aziz Mohamad JCA:

[1] The appellant, a general surgeon, had been practising as a medical practitioner at the respondents' hospital since 1985 under successive agreements called "Agreement Active Status", the last

of which was dated 1 October 1995. He was not drawing a salary for working at the hospital but instead he received professional fees from the patients he treated, less agreed deductions in favour of the respondents for expenses incurred by the respondents. The appellant had to pay the respondents rental for the use of the hospital's clinic facilities. The appellant never entered into a contract of employment with the respondents. The Agreement Active Status, in which the appellant and the respondents were referred to respectively as "the Consultant" and "SJMC", was not a contract of employment. It was an agreement setting out terms and conditions of the appointment of the appellant by the respondents "to practise as a medical professional in the Hospital" (cl. 1). Clause 13 ranked the appellant as an independent contractor in these words: "For the purposes of this agreement and all the obligations undertaken and the services to be provided hereunder, the Consultant shall be an independent contractor and not the agent or servant of SJMC". Clause 7 provided as follows:

7. Period Of Agreement

a) This Agreement shall come into force on the 1st day of October 1995 for a period up to 1st August 1996 and shall be automatically renewed for a period of three (3) years unless either party gives at least sixty (60) days prior written notice to the other party of its intention not to renew the agreement. At the end of the first three year renewal the contract will be automatically further renewed for subsequent three year periods until the consultant reaches 60 years of age unless either party gives written notice of at least sixty (60) days prior to the term ending to the other party of its intention not to renew the agreement. After the Consultant attains the age of sixty (60), his appointment shall automatically be renewed for successive periods of one (1) year each, provided that either party may terminate this Agreement by giving written notice to the other of its intention not to renew the consultant's appointment not later than sixty (60) days before the expiry of a one-year renewal period.

b) In the event SJMC elects not to renew any term of this Agreement, SJMC agrees to hold prior consultation with and receive input from the MAB.

c) Notwithstanding anything to the contrary, this Agreement may at any time be terminated by mutual consent of the parties hereto.

[2] On 1 June 2005 the respondents issued to the appellant a "Notice of Non-Renewal" pursuant to cl. 7(a), giving the appellant 60 days' notice of their intention not to renew the agreement. The 60 days would lapse on 31 July 2005.

[3] Considering himself a "workman" as defined in the Industrial Relations Act 1967 and the respondents his employer and the notice as tantamount to a dismissal of himself by his employer without just cause or excuse, on 1 July 2005 the appellant filed at the appropriate office of the Director General for Industrial Relations his representations in writing to be reinstated in his former, or what would soon be his former, office. The making of the representations was done pursuant to s. 20(1) of the Act. The Director General was to take necessary steps towards an expeditious settlement of the representations. If there was no likelihood of the representations being settled he was to report to the Minister, who, under s. 20(3), may, if he thinks fit, refer the representations to the Industrial Court for an award.

[4] On 18 July 2005 the appellant filed the originating summons in this case at the High Court together with an *ex parte* summons-in-chambers under the originating summons. Except that the originating summons had additionally a prayer for a declaration of entitlement to apply, both the originating summons and the summons-in-chambers sought various injunctions whose effect would be that the appellant would continue to function at the respondents' hospital as before, until, in the case of the summons-in-chambers, the originating summons are disposed of, and in the case of the originating summons, until, if the representations are not referred by the Minister to the Industrial Court, it is finally determined after judicial review and appeals that the decision not to refer was correct, or until, if the representations are referred to the Industrial Court, the Industrial Court decides on them.

[5] As to the appellant's reason for needing the injunction, in his oral submission before us the appellant's counsel submitted that if the appellant was allowed to remain and work at the hospital, should he succeed in getting reinstatement, he would be there already, whereas if he was deprived of his job for many years before he succeeded in the Industrial Court, the court might not order reinstatement for reason of unfitness or unsuitability as happened in *R Rama Chandran v. The Industrial Court of Malaysia* [1997] 1 CLJ 147. In this connection counsel cited Goddard CJ's

lament in *Ashton v. Shoreline Hotel* [1994] 1 ERNZ 421 at p. 436 about the remedy of reinstatement in the Employment Tribunal having become "something of an endangered species" and his call for the ordering of reinstatement where there is no good reason for refusing to order it. It is fair to point out that the fear of not being given reinstatement was not quite the reason given by the appellant in his affidavit. In para. 23 of his affidavit dated 18 July 2005 the appellant said that if interim injunction was refused him the remedy of reinstatement might be rendered nugatory. After setting out the several stages of the process that representations under s. 20(1) have to go through before they are decided by the Industrial Court, the appellant said:

> (b) This process may easily take up to 3 years, if not longer. Thus, the statutory remedy of reinstatement may be meaningless when and if it is awarded given that the fairly large body of patients under my care would have been reassigned or referred to other doctors and my position as a Consultant General Surgeon in the Defendant hospital extinguished.

What the appellant feared was not that reinstatement would be refused him but that "when and if it is awarded" the order of reinstatement might be meaningless for the stated reasons.

[6] At the High Court the learned judge heard the summons-in-chambers *inter partes*, and he dismissed it. Consequently he also dismissed the originating summons. This appeal followed.

[7] The learned judge agreed with the respondents' contention that such an injunction as the plaintiff sought "cannot be given during the pendency of a representation for reinstatement under the Act". He went on to say in para. 15 of the grounds of judgment: "In fact there has been a succession of cases which have declined or revoked interim injunction during the pendency of a referral to the Industrial Court or even after a referral to the Industrial Court." Three cases were cited. We agree with the appellant's counsel that two of them are not reinstatement cases and therefore are of little assistance to the question in hand. They are *RCA Sdn Bhd v. Pekerja-Pekerja RCA Sdn Bhd* [1991] 1 CLJ 19; [1991] 1 CLJ (Rep) 401 and *Kuantan Beach Hotel Sdn Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia* [2004] 6 CLJ 18.

[8] The other case, which appears to be a reinstatement case, is *Penang Han Chiang Associated Chinese School Association v. National Union of Teachers in Independent Schools, West Malaysia* [1988] 1 MLJ 302, a decision of the Supreme Court, then the apex court. It was about certain teachers employed by the appellants on a fixed term, yearly, basis under service agreements which provided for renewal of the contract. Disputes arose between the appellants and the teachers but the cause or nature of the disputes is not spelt out in the judgment. A complaint was made to the Ministry concerned and the Minister referred the complaint to the Industrial Court under s. 8 of the Act. After that the respondents, who acted for the teachers, filed a civil suit in the High Court, whose aim is not disclosed in the judgment, and obtained an interlocutory injunction the terms or purport of which are also not disclosed. The Supreme Court, on appeal, finding that the granting of the interlocutory injunction by the High Court was not an exercise of judicial discretion, said that "the appellate court is at liberty to rehear the whole application on its merits" and proceeded to state the following conclusion:

> Now, this is an action where the respondents, purporting to represent former teachers employed by the appellant, alleges breaches of service contracts, which trade dispute had been referred by the Minister of Labour to the Industrial Court for a hearing. In our judgment, when a trade dispute had been invested in the Industrial Court, particularly one involving allegation of wrongful dismissal, the High Court should be slow to interfere by way of interlocutory injunction except for very special circumstances and none appeared to have been shown by the respondents in the court below. Nor was any attempt to establish it during the hearing of the appeal. The reason, in our opinion, is obvious. The Industrial Court is the proper forum to deal with such complaint since it is empowered by the Industrial Relations Act 1967 (as amended) to order the employer to reinstate the workman in his former position or a similar position if the Industrial Court should hold that the dismissal was without just cause or excuse. No such power is vested in the High Court. The jurisdiction of the High Court is limited to an award of damages for breach of contract for wrongful dismissal or termination only and damages are usually inadequate compensation for loss of employment (see *Vine v. National Dock Labour Board* [1957] AC 488).

We take that to be a conclusion reached after rehearing the whole application on its merits. The interlocutory injunction was set aside.

[9] From the phrases "allegation of wrongful dismissal" and "to reinstate the workman" in the passage it may be assumed that in that case the teachers had complained of wrongful dismissal and had sought reinstatement, although it is not revealed how all that was connected to a reference under s. 8, which concerns complaints of contravention of ss. 4, 5 and 7 about rights in respect of trade unionism. But the message is clear. Where a trade dispute, "particularly one involving allegation of wrongful dismissal", is with the Industrial Court, the High Court should not, by way of interlocutory injunction, "interfere", which we take to include giving relief to either party. Excepted are "very special circumstances".

[10] As to why the Supreme Court considered that the granting of the interlocutory injunction was not an exercise of judicial discretion, the reason is given at p. 303 G-I (left) in the following words:

> The learned judge did not appear to consider the balance of convenience. If he had done so, he seemed to have disregarded the well-established rule that a contract for service or service contract would not be specifically enforced by the High Court (see section 20(1)(b) of the Specific Relief Act 1950) and that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced (see section 54(f) of the same Act and *Hill v. C.A. Parson & Co. Ltd.* [1977] 3 All ER 1345).

Although disregard of the unavailability of injunction to specifically enforce a service contract was the reason for the finding that the granting of the interlocutory injunction in that case was not an exercise of judicial discretion, the decision of the Supreme Court to set aside the interlocutory injunction after rehearing the whole application on its merits was not founded on that reason. From the passage earlier quoted in which the Supreme Court stated their conclusion, the reason appears to be of a jurisdictional nature. The thinking seems to be that since the power to decide a trade dispute, including the reinstatement of a workman, is vested in the Industrial Court and not in the High Court, the

High Court has no jurisdiction to play any role in respect of the dispute, including the granting of interlocutory injunctions for the relief of a party to the dispute.

[11] Learned counsel for the appellant in his oral submission advanced this argument in order to persuade us not to treat the decision as good authority. He said that it was not brought to the attention of the Supreme Court that s. 20(1) of the Act provides, by the remedy of reinstatement, an exception to the rule that a contract of service cannot be specifically enforced and that in *Fung Keong Rubber Manufacturing (M) Sdn. Bhd. v. Lee Eng Kiat & Ors* [1981] 1 MLJ 238 the Federal Court, the then apex court, at p. 239 H (right), described the remedy of reinstatement as "a statutorily recognized form of specific performance". The argument might be relevant only if the reason for the setting aside of the interlocutory injunction was because a contract of service cannot be specifically enforced, but as has been observed, that was not the reason. The reason was of a jurisdictional nature.

[12] The appellant's counsel also sought to distinguish the *Penang Han Chiang* case from the present case by the fact that in that case the dispute had gone to the Industrial Court whereas in this case the dispute was still with the Director General. We do not think that makes any difference to the application of the decision in the *Penang Han Chiang* case. The dispute in this case is going to end up in the Industrial Court if the Director General fails to settle it and the Minister decides to refer it to the Industrial Court.

[13] The appellant's counsel further submitted that according to *Penang Han Chiang* an interlocutory injunction may be issued in "very special circumstances". Apart from the fact that the decision gives no indication of the kind of circumstances that may be considered very special and the fact that we are moreover reluctant to hold that the circumstances in this case are very special, it seems to us that the Supreme Court themselves did not envisage the existence of very special excepting circumstances as likely. They said that no attempt had been made to show the existence of very special circumstances in the appeal and the reason for the absence of such an attempt was, to them, the obvious one of jurisdiction. It was as though to the Supreme

A Court, for the reason of jurisdiction, and not for any want of merit, any attempt to show the existence of very special circumstances would have been in vain, and the respondents knew it.

B **[14]** It makes good sense that in a case of representations for reinstatement under s. 20(1) of the Act the High Court should not grant, or should be incapable of granting, an interlocutory injunction so that the workman remains in the job until the determination of his representations. The Minister, in deciding C under s. 20(3) whether or not "he thinks fit" to refer a workman's representations to the Industrial Court, will have to act according as to whether he finds that there are issues that need to be tried in the Industrial Court. In this case, for instance, the issues are whether the appellant is a "workman" and, if he is, whether the D respondents' refusal to renew the agreement was valid. The decision of the Minister is subject to judicial review by the High Court subsequently. For the High Court to now consider granting an interlocutory injunction, it will have to decide, first and foremost, whether there are serious issues to be tried in the E Industrial Court as regards those matters. But that is a question that has to be decided also by the Minister as a statutory duty. If the High Court were to decide the question in dealing with the application for the interlocutory injunction, it would embarrass the Minister in his decision whether or not to refer the representations F to the Industrial Court. The High Court would already have answered a question which may have to be answered on a judicial review of the decision of the Minister to refer or not to refer the representations to the Industrial Court. Therefore the High Court ought not to have to find, except on a judicial review, whether G there are serious questions to be tried in the Industrial Court, and since such a finding is an essential step in the granting of an interlocutory injunction, the bar to making such a finding should be a bar to granting an interlocutory injunction.

H **[15]** The learned judge was right in relying on *Penang Han Chiang* as an authority that bars the granting of the interlocutory injunction that the appellant sought. That authority is binding on us, but apart from that, as has been explained, it is right that an interlocutory injunction should be incapable of being granted to I enable a workman to remain in his job until his representations come to the end of the process. It is therefore not necessary to

consider the string of cases from other jurisdictions cited by the appellant's counsel, headed by *Hill v. C.A. Parsons & Co. Ltd.* [1972] 1 Ch. 305, to persuade us that interlocutory injunctions have been granted as an exception to the rule that contracts of service are not specifically enforceable, beyond saying that those are not cases that involved the impediment of another jurisdiction, the industrial-relations jurisdiction, as the present case does.

[16] We dismiss this appeal with costs and order that the deposit be paid to the respondents to account of taxed costs.